### **Testimony of Attorney Norman Newhall in Opposition to SB368** 3-26-2007

I am an attorney actively engaged in trial practice for more than 35 years in Great Falls, Montana. I submit the following testimony in opposition to Senate Bill 368 which seeks to expand the provisions of Sections 50-16-201 MCA et seq. Sections 50-16-201 et seq. provide that information gathered by healthcare facilities under the auspices of quality control is confidential and privileged. Superficially, these laws appear to permit healthcare facilities to gather information with respect to medical practitioners without fear that the information will be used against the healthcare facility at a later date. As a practical matter, the laws protect careless healthcare facilities by permitting them to hide the fact that they have conducted little or no investigation at all.

At §37-3-101 MCA, the Montana legislature has previously recognized that in licensing physicians, it is the public policy of the state to protect the public from "unprofessional, improper, unauthorized, and unqualified practice of medicine . . ." In conformance with this public policy, the Montana Supreme Court has likewise recognized the common law duty of hospitals and other healthcare entities involved in credentialing and/or granting privileges to physicians to "use reasonable care to employ only competent physicians and nurses". *Maki v. Murray Hospital* (1932) 91 Mont. 251, 7 P.2d 228. Persons who place themselves in the hands of such physicians "have a right to rely upon the performance of such duty . . ." *Id.* at 233. Similarly, one who employs a physician has the duty to "use reasonable care in selecting a reasonably skilled physician". *Vesel v. Jardine Mining Company* (1939) 110 Mont. 82, 100 P.2d 75, 80.

I speak from experience in noting that the practical effect of Sections 50-16-201 et seq., and of any expansion of such sections as is proposed under SB368, is to hide from the public the fact that a healthcare facility involved in credentialing, hiring or granting privileges to a physician has conducted little or no investigation into the physician's background before turning the physician loose on unsuspecting patients.

Dr. Thomas Stephenson graduated from medical school in 1962. Until he came to Montana in 1995, he was engaged in a highly specialized practice of cosmetic surgery in Southern California. In 1991, Stephenson was profiled by the Los Angeles Times as a celebrity plastic surgeon "whose breast implant ads featuring bosomy women in negligees run frequently in the Times." During his practice in California, Stephenson was the subject of an investigation by the Federal Drug Enforcement Administration which reported that Stephenson was "a Demerol addict and was known to steal Demerol to satisfy his habit" and also reported that Stephenson had been convicted of drunk driving. Further, during the 1980s, Stephenson was the subject of an accusation by a patient to the California Medical Board alleging malpractice and that Stephenson had rendered treatment while under the influence of Demerol and alcohol. The accusation was withdrawn only after Stephenson agreed to complete the medical board's Diversion Program.

Stephenson's notoriety increased even more when he began to be regularly sued for malpractice. Stephenson was the defendant in 11 separate claims from 1986 to 1993. The California Board of Medical Examiners examined only four of the claims and found Stephenson to have committed gross negligence, repeated acts of negligence and incompetence in the practice of medicine, and to have engaged in acts involving dishonesty and corruption. Following further proceedings, the California Board added an additional finding that Stephenson had knowingly filed fraudulent insurance billings. Stephenson's California license was revoked, the revocation was stayed and his license was placed "on probation for a period of ten years" under numerous terms and conditions, all of which was effective on April 11, 1994.

Stephenson also had a Florida license. In 1995, Stephenson was charged by the Florida Board with failing to timely report the action of the California Board. The Florida Board found the allegations to be true and Stephenson's Florida license was suspended and placed on probation.

In 1995, Stephenson, without an active medical license, applied to practice medicine in Montana. The Montana Board granted a temporary license while it investigated Stephenson's application for a permanent license. While Stephenson was practicing under the temporary license, Stephenson was hired as a family practitioner by Triangle Healthcare, a Montana medical clinic, and was granted hospital privileges by Liberty County Hospital.

In November 1999, Stephenson, while practicing with Triangle Healthcare, saw my client, Jack Nelson. Stephenson diagnosed a possible aortic aneurysm, a potentially emergent and life threatening condition. The most basic standard of care required that threat of rupture of the aneurysm be immediately measured by an ultrasound exam costing approximately \$40 and which can be conducted in less than five minutes. The ultrasound machine is portable and was immediately available in the same building on the day of the physical exam. Had the procedure been performed, Stephenson would have discovered an urgent condition which was readily repairable, but which required immediate surgical repair prior to rupture.

Unfortunately, Stephenson was not even aware of the appropriate diagnostic procedure and dismissed Jack Nelson with a vague instruction to come back the following week for an x-ray. That Stephenson even suggested an x-ray is an indication of just how out of touch Stephenson was with modern practice. Several days later, Jack Nelson died an agonizing, prolonged death when his aneurysm ruptured at home.

Two months after Jack Nelson's death, Stephenson "retired" and, unknown to Jack Nelson's widow, cancelled his claims made malpractice insurance before the widow had discovered Stephenson's negligence.

Through this office, the widow brought a claim against Triangle Healthcare and Liberty County Hospital for negligence in investigating and credentialing Stephenson before hiring him and granting hospital privileges. Since Triangle Healthcare and Liberty County Hospital had the duty under Montana law to exercise ordinary care in the hiring, credentialing and privileging of physicians, Jack Nelson's widow logically sought to discover precisely what Triangle Healthcare and Liberty County Hospital had done to investigate Stephenson prior to hiring and privileging him. A copy of discovery submitted to Triangle Healthcare and Liberty County Hospital is attached to this testimony. Under the provisions of Sections 50-16-201 et seq., both Triangle Healthcare and Liberty County Hospital "stonewalled" Mrs. Nelson's legitimate inquiry thereby posturing as if they had done something to investigate Stephenson, when in fact they had done little or nothing. Subsequent discovery, by means of deposition, disclosed that the person acting as the medical director for Triangle Healthcare and Liberty County Hospital met Dr. Stephenson for lunch on one occasion and the next meeting was at a cocktail reception after Stephenson had already been hired and privileged.

The practical effect of Sections 50-16-201 et seq. is to permit irresponsible healthcare facilities to hide their failure to conduct proper investigation and review. Responsible healthcare providers who properly investigate and credential physicians before permitting them to practice medicine do not need the protections of Sections 50-16-201 et seq. Instead the secrecy encouraged by Sections 50-16-201 et seq. permits the few irresponsible medical providers (the "bad apples") to hide the fact that they have failed to fulfill their legal duty and subverts the public policy previously enunciated by the legislature in §37-3-101 to protect the public from "unprofessional, improper, unauthorized, and unqualified practice of medicine . . .."

SB368 seeks to expand the provisions of Sections 50-16-201 et seq. Under the guise of creating "quality control guidelines" SB 368 actually permits even more medical providers to do nothing to investigate incompetence and then hide such fact from persons who have been injured by incompetent physicians whom they failed to investigate before hiring. The unfortunate, albeit unintended, consequences of Sections 50-16-201 et seq. should not be expanded. I therefore respectfully urge this committee to oppose SB368.

Norman L. Newhall Linnell, Newhall, Martin & Schulke, P.C. P.O. Box 2629 Great Falls, MT 59403 (406) 454-5800 Through this office, the widow brought a claim against Triangle Healthcare and Liberty County Hospital for negligence in investigating and credentialing Stephenson before hiring him and granting hospital privileges. Since Triangle Healthcare and Liberty County Hospital had the duty under Montana law to exercise ordinary care in the hiring, credentialing and privileging of physicians, Jack Nelson's widow logically sought to discover precisely what Triangle Healthcare and Liberty County Hospital had done to investigate Stephenson prior to hiring and privileging him. A copy of discovery submitted to Triangle Healthcare and Liberty County Hospital is attached to this testimony. Under the provisions of Sections 50-16-201 et seq., both Triangle Healthcare and Liberty County Hospital "stonewalled" Mrs. Nelson's legitimate inquiry thereby posturing as if they had done something to investigate Stephenson, when in fact they had done little or nothing. Subsequent discovery, by means of deposition, disclosed that the person acting as the medical director for Triangle Healthcare and Liberty County Hospital met Dr. Stephenson for lunch on one occasion and the next meeting was at a cocktail reception after Stephenson had already been hired and privileged.

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Norman L. Newhall

Linnell, Newhall, Martin & Schulke, P.C.

P.O. Box 2629

Great Falls, MT 59403

(406) 454-5800

John D. Alexander
UGRIN, ALEXANDER, ZADICK & HIGGINS, P.C.
#2 Railroad Square, Suite B
P.O. Box 1746
Great Falls, MT 59403
Telephone: (406) 771-0007
Facsimile: (406) 452-9360

Attomeys for Defendants Liberty County and Liberty County Hospital and Nursing Home, Inc.

MONTANA TWELFTH JUDICIAL DISTRICT COURT, LIBERTY COUNTY

DORIS NELSON, Individually, and as Personal Representative of the Estate of Emil J. (Jack) Nelson,

Plaintiff,

-V5-

STATE OF MONTANA; LIBERTY COUNTY, a Political Subdivision of the State of Montana; LIBERTY COUNTY HOSPITAL AND NURSING HOME, INC., a Montana corporation; THOMAS R. STEPHENSON, M.D.; RICHARD S. BUKER, JR., M.D.; TRIANGLE HEALTH CARE; TRIANGLE HEALTHCARE PLLP; JOHN DOES I-IV.

Defendants.

CAUSE NO. DV-03-3237

DEFENDANTS LIBERTY COUNTY
AND LIBERTY COUNTY
HOSPITAL AND NURSING HOME,
INC.'S RESPONSES TO
PLAINTIFF'S FIRST DISCOVERY
REQUESTS (INCLUDING
REQUESTS FOR ADMISSIONS)

Defendants Liberty County and Liberty County Hospital and Nursing Home, Inc. provide the following responses to Plaintiff's First Discovery Requests to Liberty County and Liberty County Hospital and Nursing Home, Inc.:

# **GENERAL OBJECTION**

These Defendants object to the instructions and definitions to the extent that the preliminary statements in the Plaintiff's First Discovery Requests exceeds the obligation to

respond to discovery as set forth by the Montana Rules of Civil Procedure.

DISCOVERY REQUEST NO. 2001: Produce your complete file and all documents relating to the application of Thomas R. Stephenson for hospital privileges or to be a member of your medical staff at Chester, Montana.

RESPONSE: Objection on the grounds and for the reasons that this discovery request seeks information and documents that are privileged and non-discoverable pursuant to MCA § 50-16-203, MCA § 50-16-205 and MCA § 37-2-201.

Objection is also entered on the grounds and for the reasons that Dr. Thomas R. Stephenson has a legitimate privacy interest in and he has not provided a consent to the release of any documents responsive to this request.

To the extent that this request is not for "data" as defined by MCA § 50-16-201 and is not privileged or confidential as provided by the above-referenced statutes, responsive documents are attached as Exhibit A.

DISCOVERY REQUEST NO. 2002: Produce your complete file and all documents relating, directly or indirectly, to the grant of hospital privileges to Thomas R. Stephenson or the admission of Thomas R. Stephenson as a member of your medical staff.

RESPONSE: Objection on the grounds and for the reasons that this discovery request seeks information and documents that are privileged and non-discoverable pursuant to MCA § 50-16-203, MCA § 50-16-205 and MCA § 37-2-201.

Objection is also entered on the grounds and for the reasons that Dr. Thomas R. Stephenson has a legitimate privacy interest in and he has not provided a consent to the release of any documents responsive to this request.

DISCOVERY REQUEST NO. 2003: Produce your complete file and all documents relating, directly or indirectly, to the efforts of you, or of persons working on your behalf, to credential, investigate or to otherwise determine the qualifications of Thomas R. Stephenson to be granted hospital privileges or to be a member of your medical staff.

RESPONSE: Objection on the grounds and for the reasons that this discovery request seeks information and documents that are privileged and non-discoverable pursuant to MCA § 50-16-203, MCA § 50-16-205 and MCA § 37-2-201.

Objection is also entered on the grounds and for the reasons that Dr. Thomas R. Stephenson has a legitimate privacy interest in and he has not provided a consent to the release of any documents responsive to this request.

DISCOVERY REQUEST NO. 2004: Produce your complete file and all documents relating, directly or indirectly, to the termination of Thomas R. Stephenson's hospital privileges or of his permission to serve as a member of your medical staff.

RESPONSE: Objection on the grounds and for the reasons that this discovery request seeks information and documents that are privileged and non-discoverable pursuant to MCA § 50-16-203, MCA § 50-16-205 and MCA § 37-2-201.

Objection is also entered on the grounds and for the reasons that Dr. Thomas R. Stephenson has a legitimate privacy interest in and he has not provided a consent to the release of any documents responsive to this request.

Without waiving this objection, the termination of Dr. Thomas R. Stephenson's hospital privileges and/or his permission to serve as a member of the medical staff was the result of Dr. Stephenson relocating to another community.

having responsibility for overseeing the practice of medicine in California for information regarding Dr. Stephenson's practice of medicine in California.

RESPONSE: Admit with the qualification that inquiry was indirectly made by making a request from the National Practitioner Data Bank.

DISCOVERY REQUEST NO. 2008: Admit that you did not make inquiry of, or request information from, the National Practitioner Data Bank for information regarding Dr. Stephenson.

RESPONSE: Deny.

<u>DISCOVERY REQUEST NO. 2009</u>: Admit that you did not make inquiry of, or request information from, the Federation of State Medical Boards for information regarding Dr. Stephenson.

RESPONSE: Admit with the qualification that the Federation of State Medical Boards may have provided information to the National Practitioner Data Bank and a request was made of the National Practitioner Data Bank for information regarding Dr. Stephenson.

DISCOVERY REQUEST NO. 2010: Admit that you did not make inquiry of, or request information from, any person, governmental agency or other entity outside of the State of Montana relating to the practice of medicine by Dr. Stephenson in California.

RESPONSE: Deny.

DISCOVERY REQUEST NO. 2011: Identify all persons named as references by Dr. Stephenson prior to the grant of hospital privileges to Thomas R. Stephenson or to permission to serve as a member of your medical staff.

RESPONSE: Objection on the grounds and for the reasons that this discovery

request seeks information and documents that are privileged and non-discoverable pursuant to MCA § 50-16-203, MCA § 50-16-205 and MCA § 37-2-201.

Objection is also entered on the grounds and for the reasons that Dr. Thomas R. Stephenson has a legitimate privacy interest in and he has not provided a consent to the release of any documents responsive to this request.

DISCOVERY REQUEST NO. 2012: Admit that you did not make inquiry of, or request information from, any reference identified by Stephenson.

RESPONSE: Objection on the grounds and for the reasons that this discovery request seeks information and documents that are privileged and non-discoverable pursuant to MCA § 50-16-203, MCA § 50-16-205 and MCA § 37-2-201.

Objection is also entered on the grounds and for the reasons that Dr. Thomas R. Stephenson has a legitimate privacy interest in and he has not provided a consent to the release of any documents responsive to this request.

DISCOVERY REQUEST NO. 2013: If your response to Discovery Request 2006 through 2010, and Discovery Request 2012, or to any of them is a denial, or is anything other than an unqualified admission:

- a. Identify each person, department or agency to whom inquiry or requests for information was made;
- b. State the date or dates of each inquiry or request;
- c. State whether the inquiry or request was written or oral;
- d. Identify the person making the inquiry or request; and
- e. Produce all documents evidencing such inquiry or request and all responses to

any inquiry or request.

#### RESPONSE:

- a. National Practitioner Data Bank;
- b. Request processed 07/15/97;
- c. Unknown;
- d. Request would have been made under the auspices of Rich Moog, CFO, who is licensed to access the data bank, but may have been requested by Glenda Hansen of the Liberty County Hospital Business Office.
- e. Objection on the grounds and for the reasons that this discovery request seeks information and documents that are privileged and non-discoverable pursuant to MCA § 50-16-203, MCA § 50-16-205 and MCA § 37-2-201.

  Objection is also entered on the grounds and for the reasons that Dr. Thomas R. Stephenson has a legitimate privacy interest in and he has not provided a consent to the release of any documents responsive to this request.

DISCOVERY REQUEST NO. 2014: Admit that the documents annexed hereto as Appendix H (and Bates stamped 1-13 and 185-216) are true and correct copies of Emil J. (Jack) Nelson's medical records which records are in your files.

RESPONSE: Admit.

DISCOVERY REQUEST NO. 2015: Other than the documents annexed as Appendix H, produce true and correct copies of any and all medical records, correspondence, and any other documents relating to the care or treatment of Emil J. (Jack) Nelson.

RESPONSE: Except for the attached records, Exhibit B, and the medical records contained in the Medical Legal Panel records, these Defendants are unaware of any other medical records, correspondence or other documents relating to the care or treatment of Emil J. (Jack) Nelson.

DISCOVERY REQUEST NO. 2016: Produce all documents showing, or tending to

show (either expressly or implicitly) that an insurance company was made aware, at any time, of a possible claim for professional negligence arising from care of Emil J. (Jack) Nelson provided by Thomas R. Stephenson, M.D.

RESPONSE: Objection on the grounds that said request is irrelevant and not calculated to lead to relevant evidence. Without waiving this objection, please see attached documents, Exhibit C.

DISCOVERY REQUEST NO. 2017: Produce any and all other documents not hereinabove produced and relating to the matters described in the Complaint.

RESPONSE: Objection is entered on the grounds and for the reasons that said request is vague, ambiguous and overbroad to provide a response.

<u>DISCOVERY REQUEST NO. 2018:</u> Produce all minutes of meetings relating, directly or indirectly, to the grant of hospital privileges to Thomas R. Stephenson or to serve as a member of your medical staff.

RESPONSE: Objection on the grounds and for the reasons that this discovery request seeks information and documents that are privileged and non-discoverable pursuant to MCA § 50-16-203, MCA § 50-16-205 and MCA § 37-2-201.

Objection is also entered on the grounds and for the reasons that Dr. Thomas R. Stephenson has a legitimate privacy interest in and he has not provided a consent to the release of any documents responsive to this request.

To the extent that minutes are not subject to the basis for the objection, those minutes are attached as Exhibit D.

DISCOVERY REQUEST NO. 2019: Identify each administrator of the hospital from

RESPONSE: Articles of Incorporation were filed on December 12, 1997, and approved on January 6, 1998 with Douglas A. Faus and Richard P. Moog as Incorporators.

<u>DISCOVERY REQUEST NO. 2028:</u> State the date any predecessor hospital to Liberty County Hospital and Nursing Home, Inc.; was formed; the date, if different, that it first conducted business; and the identity of the person or persons who formed it.

RESPONSE: Liberty County Hospital and Nursing Home was originally formed as a charitable hospital by Liberty County which began operating in 1953 and was authorized by Liberty County Commissioners at that time. See attached news articles, Exhibit G.

<u>DISCOVERY REQUEST NO. 2029:</u> Produce true and correct copies of performance reviews or evaluations of Thomas R. Stephenson while he was practicing in Chester, Montana, with privileges at your hospital or while he was a member of your medical staff.

RESPONSE: Objection on the grounds and for the reasons that this discovery request seeks information and documents that are privileged and non-discoverable pursuant to MCA § 50-16-203, MCA § 50-16-205 and MCA § 37-2-201.

Objection is also entered on the grounds and for the reasons that Dr. Thomas R. Stephenson has a legitimate privacy interest in and he has not provided a consent to the release of any documents responsive to this request.

DISCOVERY REQUEST NO. 2030: Produce all documents submitted to the State of Montana by you (or by members of your medical or administrative staff) relating, directly or indirectly, to any evaluation, assessment or review of Dr. Stephenson's performance.

RESPONSE: Objection on the grounds and for the reasons that this discovery request seeks information and documents that are privileged and non-discoverable pursuant to MCA § 50-16-203, MCA § 50-16-205 and MCA § 37-2-201.

DATED this  $12^{\frac{1}{12}}$  day of March, 2004.

Walter Busch
Waiter Busch

STATE OF MONTANA )

Liberty : ss

County of Gascade )

On this 12th day of March, 2004, before me, the undersigned, a notary public for the State of Montana, personally appeared Walter Busch, known to me to be the CEO of Liberty County and Nursing Home, the corporation that executed the within and foregoing instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year first hereinabove written.



Notary Public for the State of Montana Residing at Great falls, Montana My commission expires: 5/23/2066 DATED this 10 day of March, 2004.

UGRIN, ALEXANDER, ZADICK & HIGGINS, P.C.

By: \_\_\_\_\_\_ Sohn D. Alexander

#2 Railroad Square, Suite B

P.O. Box 1746

Great Falls, Montana 59403

Attorneys for Defendants Liberty County and Liberty County Hospital and Nursing Home, Inc.

#### CERTIFICATE OF MAILING

I hereby certify that the foregoing was duly served upon the respective attorneys for each of the parties entitled to service by depositing a copy in the United States mails at Great Falls, Montana, enclosed in a sealed envelope with first class postage prepaid thereon and addressed as follows:

Mr. Norman L. Newhall LINELL, NEWHALL, MARTIN & SCHULKE, P.C. P.O. Box 2629 300 4th St. No. Great Falls, MT 59403-2629

Gregory A. Van Horssen Keller, Reynolds, Drake, Johnson & Gillespie, P.C. 50 South Last Chance Guich P.O. Box 598 Helena, MT 59601

Lee Le Veque 410 Central Avenue, Ste. 309 P.O. Box 909 Great Falls, MT 59403-0909 Elizabeth Baker Hughes, Keliner, Sullivan & Alke 40 West Lawrence, Ste. A P.O. Box 1166 Helena, MT 59624-1166

Robert B. Pfennigs JARDINE, STEPHENSON, BLEWETT & WEAVER, P.C. P.O. Box 2269 Great Falls, MT 59403-2269

DATED this <u>10</u> day of March, 2004.

JGRIN, ALEXANDER, ZADICK & HIGGINS, P.C

E. LEE LeVEQUE 1 410 Central Avenue, Suite 515 2 P. O. Box 909 Great Falls, MT 59403-0909 3 Telephone: (406) 727-4131 Facsimile: (406) 727-4171 4 Attorney for Defendant Triangle Health Care PLLP 5 6 MONTANA TWELFTH JUDICIAL DISTRICT COURT, LIBERTY COUNTY 7 8 DORIS NELSON, Individually and as CAUSE NO. DV-03-3237 Personal Representative of the Estate of ) 9 Emil J. (Jack) Nelson, 10 11 Plaintiff, 12 VS. 13 STATE OF MONTANA; LIBERTY 14 COUNTY, a political subdivision of the ) RESPONSE TO PLAINTIFF'S State of Montana; LIBERTY COUNTY ) FIRST DISCOVERY 15 HOSPITAL AND NURSING HOME, REQUESTS TO TRIANGLE INC., a Montana corporation; THOMAS) 16 HEALTH CARE, PLLP R. STEPHENSON, MD; RICHARD S. 17 BUKER, JR., MD; TRIANGLE HEALTH CARE; TRIANGLE 18 HEALTH CARE PLLP; JOHN 19 DOES I-IV. 20 Defendants. 21 22 COMES NOW TRIANGLE HEALTH CARE, PLLP, and responds to 23 plaintiff's First Discovery Requests as follows: 24 25 26 27 Page 1 of 19 28

DISCOVERY REQUEST NO. 6001: Produce your complete file and all documents relating, directly or indirectly, to the application of Thomas R.

Stephenson for employment by, or to practice medicine at, Triangle Health Care or Triangle Health Care, PLLP, in Chester, Montana.

RESPONSE: With regard to Triangle Health Care PLLP, we are not presently aware of any such documents. Dr. Stephenson was not an employee of Triangle Health Care PLLP.

DISCOVERY REQUEST NO. 6002: Produce your complete file and all documents relating, directly or indirectly, to the engagement of Thomas R. Stephenson to practice medicine in Chester, Montana.

PRESPONSE: With regard to Triangle Health Care, PLLP, we are not presently aware of any such documents. Dr. Stephenson was not an employee of Triangle Health Care, PLLP. In the event any such records might exist they would not be discoverable under applicable law, including, but not limited to, MCA Sec. 37-2-201, et seq; MCA Sec. 50-16-201, et seq; and privacy laws.

DISCOVERY REQUEST NO. 6003: Produce your complete file and all documents relating, directly or indirectly, to the efforts of you, or of persons working on your behalf, to credential, investigate or to otherwise determine the qualifications of Thomas R. Stephenson to practice medicine with or at Triangle Health Care, PLLP.

RESPONSE: See response to Discovery Request No. 6002.

DISCOVERY REQUEST NO. 6004: Produce your complete file and all documents relating, directly or indirectly, to the <u>termination of the engagement</u> of Thomas R. Stephenson, to practice medicine with or at Triangle Health Care, PLLP.

RESPONSE: Attached hereto is a copy of a letter from Thomas R. Stephenson, MD dated October 30, 1999, indicating his resignation effective January 1, 2000.

DISCOVERY REQUEST NO. 6005: Produce your complete file and all documents relating, directly or indirectly, to the <u>dissolution</u> of Triangle Health Care, PLLP, including, without limitation, all documents relating to the distribution of assets and liabilities.

RESPONSE: Attached hereto are copies of the following documents:

- A. Application for Cancellation of Limited Liability Partnership

  prepared December 15, 2000, and filed with the Secretary of State on

  January 16, 2001;
- B. Correspondence from the Secretary of State dated January 5, 2001.
- C. As to the distribution of assets, all assets of Triangle Health Care,
  PLLP, were transferred to Liberty County Hospital and Nursing

practicing at the clinic in Chester, Montana, known as Triangle Health Care or Triangle Health Care, PLLP.

RESPONSE: None.

DISCOVERY REQUEST NO. 6028: Produce all documents submitted to the State of Montana by Triangle Health Care, PLLP (or by persons acting on their behalf, e.g., Richard S. Buker, Jr., or other members of the medical or administrative staff) relating, directly or indirectly, to any evaluation, assessment or review of Dr. Stephenson's performance.

RESPONSE: With regard to Triangle Health Care, PLLP, on approximately two occasions a number of Dr. Stephenson's patient charts were provided to State officials with regard to the licensing process. These charts are not discoverable under applicable law, including, but not limited to, M.C.A. §37-2-201, et seq.; M.C.A. §50-16-201, et seq.; and privacy laws.

DISCOVERY REQUEST NO. 6029: Produce for inspection and copying a true and correct copy of any insurance agreement (including Declaration Page) under which an insurance company or companies carrying on an insurance business may be liable to satisfy part or all of any judgment which may be entered in the above entitled action or to indemnify or reimburse for payments made to satisfy a judgment.

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- c. Sufficient information concerning the identity, nature of, and subject matter of the document so that the propriety of the claim of privilege may be presented for determination by the court;
- d. The identify of each person who participated in its preparation and all persons to whom it was addressed, or to whom it was disclosed, including the identity of all persons provided with a copy of the document; and
- e. The source of the document (e.g., personnel file), all attachments to the document, the number of pages comprising the document, and whether the document is handwritten or typewritten.

RESPONSE: Not applicable.

DATED this \_\_\_\_\_ day of March, 2004.

#### TRIANGLE HEALTH CARE, PLLP

By		
	Richard S. Buker, Jr., MD	
	(Former Partner)	

LEE LEVEQUE LAW OFFICES, pllc

Ву

E. LEE LeVEQUE

410 Strain Bldg., Suite 515

P. O. Box 909

Great Falls, MT 59403-0909

Attorney for Defendant Triangle

Health Care PLLP

Page 16 of 19

Disc.

JAMES E. AIKEN
ROBERT B. PFENNIGS
Jardine, Stephenson, Blewett & Weaver, P.C.
300 Central Avenue, Suite 700
P. O. Box 2269
Great Falls MT 59403-2269
(406) 727-5000

Attorneys for Richard S. Buker, Jr., M.D. and Triangle Health Care

# MONTANA TWELFTH JUDICIAL DISTRICT COURT, LIBERTY COUNTY

DORIS NELSON, Individually, and as Personal Representative of the Estate of Emil J. (Jack) Nelson,

Plaintiff.

-VS-

STATE OF MONTANA; LIBERTY COUNTY, a Political Subdivision of the State of Montana; LIBERTY COUNTY HOSPITAL AND NURSING HOME, INC., a Montana corporation; THOMAS R. STEPHENSON, M.D.; RICHARD S. BUKER, JR., M.D.; TRIANGLE HEALTH CARE; TRIANGLE HEALTH CARE, PLLP; JOHN DOES 1-IV,

Defendants.

Cause No. DV-03-3237

RESPONSES TO PLAINTIFF'S FIRST DISCOVERY REQUESTS TO TRIANGLE HEALTHCARE (INCLUDING REQUESTS FOR ADMISSIONS)

The Defendant TRIANGLE HEALTHCARE, objects and responds to Plaintiff's First Discovery Requests To Triangle Healthcare (Including Requests For Admissions) dated January 9, 2004, as follows:

#### GENERAL OBJECTION

Defendant objects to the instructions and definitions set forth and contained in Plaintiff's First Discovery Requests To Triangle Healthcare (Including Requests For Admissions) to the extent they seek to impose upon Defendant and its attorneys responsibilities and obligations pertaining to discovery and for compiling information exceeding the responsibilities and obligations imposed by the Montana Rules of Civil Procedure; to the extent they seek to cause Defendant to compile documents, information and data which Defendant is not required by the Montana Rules of Civil Procedure to compile for an adverse party; to the extent they seek to require Defendant to "identify" and provide "identification" in greater detail and to a greater degree than required by the Montana Rules of Civil Procedure; and to the extent they seek divulgence of privileged communications and work product of Defendant's attorneys.

DISCOVERY REQUEST NO. 5001: Produce your complete file and all documents relating, directly or indirectly, to the application of Thomas R. Stephenson for employment by, or to practice medicine at, Triangle Healthcare or Triangle Healthcare, PLLP, in Chester, Montana.

RESPONSE: Dr. Thomas R. Stephenson did not apply for employment with, nor did he apply to practice medicine with this Defendant. Regardless, the clinic was sold to Liberty County Hospital and Nursing Home, Inc. in August of 2000 and it did not maintain a separate file. Accordingly, even if such documents existed, this Defendant would not have copies.

DISCOVERY REQUEST NO. 5002: Produce your complete file and all documents relating, directly or indirectly, to the engagement of Thomas R. Stephenson to practice medicine in Chester, Montana.

RESPONSE: Defendant objects to this Interrogatory on the ground the term "engagement" is vague and ambiguous. Without waiving its objection and to the extent the term is understood, the only record which Defendant has or is aware of regarding the "engagement" of Dr. Thomas R. Stephenson to practice medicine in Chester is a contract dated November 1, 1997, that Dr. Stephenson apparently entered into with Liberty County Hospital and Nursing Home. A copy is attached as Exhibit 1.

DISCOVERY REQUEST NO. 5003: Produce your complete file and all documents relating, directly or indirectly, to the efforts of you, or of persons working on your behalf, to credential, investigate or to otherwise determine the qualifications of Thomas R. Stephenson to practice medicine with you or Triangle Healthcare, PLLP.

RESPONSE: Defendant objects to this request on the ground the information requested is privileged and protected from disclosure pursuant to the provisions of MCA ¶ 50-16-203, 50-16-205 and 37-2-201. Defendant also objects to disclosure based on privacy considerations of the person or persons identified in any such documents. Without waiving its objections, the clinic was sold to Liberty County Hospital and Nursing Home, Inc. in August of 2000 and it did not maintain a separate file. Accordingly, this Defendant has no such records.

RESPONSE: Defendant objects to this request on the ground the information sought is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence.

DISCOVERY REQUEST NO. 5013: Admit that you did not make inquiry of, 4019 or request information from, the Federation of State Medical Boards for information regarding Dr. Stephenson.

RESPONSE: Defendant objects to this request on the ground the information sought is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence.

DISCOVERY REQUEST NO. 5014: Admit that you did not make inquiry of, works or request for information from, any person, governmental agency or other entity outside of the State of Montana relating to the practice of medicine by Dr. Stephenson in California.

RESPONSE: Defendant objects to this request on the ground the information sought is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence.

DISCOVERY REQUEST NO. 5015: Identify all persons named as references #0

by Stephenson in his application to practice medicine at Chester, Montana

RESPONSE: Defendant objects to this request on the ground the information sought is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request on the ground the information requested is privileged and protected from disclosure pursuant to the

provisions of MCA ¶¶ 50-16-203, 50-16-205 and 37-2-201. Defendant also objects to disclosure based on privacy considerations of the person or persons identified in any such documents.

DISCOVERY REQUEST NO. 5016: Admit that you did not make inquiry of, po!'7 or request information from, any reference identified by Stephenson.

RESPONSE: Defendant objects to this request on the ground the information sought is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request on the ground the information requested is privileged and protected from disclosure pursuant to the provisions of MCA [4] 50-16-203, 50-16-205 and 37-2-201. Defendant also objects to disclosure based on privacy considerations of the person or persons identified in any such thesements.

DISCOVERY REQUEST NO. 5017: If your response to Discovery Request 4018 5010 through 5014, and Discovery Request 5016, or to any of them is a denial, or is anything other than an unqualified admission:

- Identify each person, department or agency to whom inquiry or requests for information was made;
- State the date or dates of each inquiry or request;
- c. State whether the inquiry or request was written or oral;
- Identify the person making the inquiry or request; and
- e. Produce all documents evidencing such inquiry or request and all responses to any inquiry or request.

DISCOVERY REQUEST NO. 5030: Identify each person who was an owner of Triangle Healthcare immediately prior to the formation and commencement of business of Triangle Healthcare, PLLP.

**RESPONSE:** The two partners in Triangle Healthcare prior to formatting of Triangle Helathcare PLLP were Dr. Richard S. Buker, Sr., and Dr. Forrest Lanchbury.

<u>DISCOVERY REQUEST NO. 5031</u>: If Triangle Healthcare remains in existence, identify each person who is presently an owner of Triangle Healthcare and state that the date each acquired his or her ownership interest.

RESPONSE: The clinic was sold to Liberty County Hospital and Nursing Home, Inc. in August of 2000.

DISCOVERY REQUEST NO. 5032: State the date Triangle Healthcare was formed; the date, if different, that it first conducted business; and the identity of the person or persons who formed Triangle Healthcare.

RESPONSE: The clinic was sold to Liberty County Hospital and Nursing Home, Inc. in August of 2000 and it did not maintain a separate file. Without a file, Defendant is not able to provide this information.

DISCOVERY REQUEST NO. 5033: Produce true and correct copies of performance reviews or evaluations of Thomas R. Stephenson while he was practicing at the clinic in Chester, Montana, known as Triangle Healthcare or Triangle Healthcare, PLLP.

RESPONSE: Defendant objects to this request on the ground the information sought is irrelevant and is not reasonably calculated to lead to the discovery

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of admissible evidence. Defendant further objects to this request on the ground the information requested is privileged and protected from disclosure pursuant to the provisions of MCA ¶¶ 50-16-203, 50-16-205 and 37-2-201. Defendant also objects to disclosure based on privacy considerations of the person or persons identified in any such documents.

DISCOVERY REQUEST NO. 5034: Produce all documents submitted to the State of Montana by you or by Triangle Healthcare, PLLP (or by persons acting on their behalf, e.g. Richard S. Buker, Jr., or other members of the medical or administrative staff) relating, directly or indirectly, to any evaluation, assessment or review of Dr. Stephenson's performance.

RESPONSE: Defendant objects to this request on the ground the information sought is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request on the ground the information requested is privileged and protected from disclosure pursuant to the provisions of MCA ¶ 50-16-203, 50-16-205 and 37-2-201. Defendant also objects to disclosure based on privacy considerations of the person or persons identified in any such documents.

DISCOVERY REQUEST NO. 5035: Produce for inspection and copying a true and correct copy of any insurance agreement (including Declaration page) under which an insurance company or companies carrying on an insurance business may be liable to satisfy part or all of any judgment which may be entered in the above entitled action or to indemnify or reimburse for payments made to satisfy a judgment.

RESPONSE: For the reasons set forth herein, Defendant believes that many of the documents requested by Plaintiff are protected from disclosure on the basis of both privilege and privacy. However, this Defendant is not the possession of any such documents.

DATED this 6 day of March, 2004.

JARDINE, STEPHENSON, BLEWETT & WEAVER, P.C.

v. AllaBlun

Attorneys for Defendant Richard S. Buker, Jr., M.D. and

Triangle Health Care

## VERIFICATION

STATE OF MUNIAMA	}		
	: \$5.		
County of Liberty	)	•	
SURED S. BURELING	eing first mily swom.	on oath deposes	and says:

That he/she is one of the Defendants in the above-entitled action; that he/she in stread the foregoing Responses to Plaintiff's First Discovery Requests To Triangle Healthcare (Including Requests for Admissions), and knows the contents thereof. It is that the matters and things contained therein are true to the best of his knowledge, information and belief.

SUBSCRIBED AND SWORN TO before me this 10 day of March, 2004.

(Xuliand & Briber J.



Marsha a. Stokes

Notary Public for the State of Montana

Printed name Marsha a. Stokes

Residing at Checker, MT

My Commission Expires: 5/23/2004.